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REVIEW OF PRIORITY THEMES

Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime

Report of the Secretary-General

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INTRODUCTION

1. Pursuant to General Assembly resolution 49/159, the Commission on Crime Prevention and Criminal Justice, at its fourth session, reviewed the implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex), adopted by the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994. On the recommendation of the Commission, the Economic and Social Council adopted resolution 1995/11, in which it requested the Secretary-General to initiate the process of requesting the views of Governments on the opportunity and impact of international instruments such as a convention or conventions against organized transnational crime and on the issues and elements that could be covered therein. The Council also requested the Secretary-General to collect and analyse information on the structure and dynamics of organized transnational crime and on the responses of States to that problem. The Council decided that an open-ended intergovernmental working group should be established at the fifth session of the Commission to consider the results of the work described above and to propose further action on the implementation of the Naples Political Declaration and Global Action Plan. In the same resolution, the Council requested the Secretary-General to submit to Member States for their consideration at the fifth session of the Commission a proposal on the creation of a central repository for existing legislative and regulatory measures and information on organizational structures designed to combat organized transnational crime, taking into account the capabilities of the United Nations Crime and Justice Information Network.

2. In its resolution 1995/27, section II, the Council requested the Secretary-General to consider the feasibility of establishing an integrated system for the periodic gathering and dissemination of information on national legislation in crime prevention and criminal justice and its implementation, taking into account

the current and planned capabilities of the United Nations Crime and Justice Information Network and the activities of other United Nations entities and relevant intergovernmental organizations. In addition, the Council invited Member States to cooperate in that regard, with a view to encouraging progressive alignment regarding, *inter alia*, international cooperation, extradition and other bilateral and multilateral modalities of mutual assistance in criminal matters and requested the Secretary-General to report thereon to the Commission at its fifth session. In the same section of that resolution, the Council also requested the Secretary-General to continue studying the actual situation of organized transnational crime and effective measures for its control.

3. The present report contains information provided by 20 States (Argentina, Australia, Austria, Belarus, Bolivia, Canada, Chile, Cuba, Germany, Holy See, Italy, Japan, Jordan, Malaysia, Panama, Philippines, Qatar, Republic of Korea, Saudi Arabia and Turkey), as well as the results of the continuing study of the actual situation of organized transnational crime. It also contains proposals designed to facilitate the work of the Commission in monitoring the implementation of the Naples Political Declaration and Global Action Plan and, for this reason, is accompanied by recommendations of the Regional Ministerial Workshop on Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, held at Buenos Aires from 27 to 30 November 1995 (E/CN.15/1996/2/Add.1). The General Assembly, at its fiftieth session, considered a report of the Secretary-General on the implementation of its resolution 49/159 (A/50/433), which contained proposals for activities to facilitate and expedite the implementation of the Naples Political Declaration and Global Action Plan.

I. OVERVIEW OF DEVELOPMENTS IN ORGANIZED TRANSNATIONAL CRIME

4. The Naples Political Declaration and Global Action Plan placed increased emphasis on the accumulation of a critical mass of reliable knowledge on organized transnational crime, its structure and dynamics. Such knowledge was viewed as a prerequisite for informed decision-making and concerted action at the national and international levels. That point was made by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995, by the Commission at its fourth session and by the Council in its resolutions 1995/11 and 1995/27. States have also emphasized the need for improved knowledge and the role that the United Nations can play in its accumulation and dissemination. In recent years, organized transnational crime has developed into a new form of geopolitics, with its own character, logic, structures and support systems. This geopolitical perspective is important in organizing both existing and new knowledge about organized transnational crime.

5. The geopolitics of organized transnational crime differs in many respects from traditional geopolitics, in which control of natural resources and of critical geographical areas is central to success. The new geopolitics rests on a series of interlocking and complementary features of global politics and economics that helps to explain not only the growth of organized transnational crime, but also why it has become such a formidable problem for the international community.

A. The diversity of transnational criminal organizations

6. Part of the problem for the international community in trying to deal with organized transnational crime is that there is no single organizational or behavioural paradigm that provides a constant and accessible target. Criminal organizations vary in size, scale, bonding mechanisms, the range of activities, their geographical scope, their relationships with the power structures in home and host States, their internal organizations and structures, and the combination of instruments that they use both to promote their criminal enterprises and to protect themselves against government and law enforcement efforts. When national and cultural differences are taken into account, the diversity becomes even more salient, and more problematic for law enforcement, especially in host States. At the national level, measures that work effectively against one organized criminal group, for example, may prove far less effective against others. In the United States of

America, wiretapping and electronic surveillance have allowed law enforcement to make great inroads against the Mafia. Yet the same tools have proved far less effective against, for example, Chinese or Nigerian criminal organizations that are able to use a variety of dialects to protect themselves against electronic eavesdropping. As noted in a report of the United States General Accounting Office: "The Chinese language, which consists of numerous dialects, presents significant barriers, as does the language often spoken by Jamaican 'posse' members [, which consists of a dialect] known as 'patois'. ... Police noted that a severe shortage of qualified interpreters complicates investigations of these criminal gangs. Wiretaps of conversations in foreign languages are useless, for example, if not monitored by someone who understands the language. In one fraud case, an average of seven to nine languages were recorded on federal wiretaps, including Chinese and Hebrew." Similarly, obtaining informants or penetrating tightly knit ethnic groups by using undercover agents has become much more problematic. Even where law enforcement instruments are in place and have proved their effectiveness, the transnational nature and increasing diversity of criminal organizations have rendered them less effective. The problems are even greater, however, in States where these instruments are either not available or not widely used.

B. Location in a safe home base

7. In traditional geopolitics, power was linked to territory and control over critical regions was deemed to be a major strategic asset. In the new geopolitics, the crucial variable is not power so much as authority - or rather, the lack of it. Criminal organizations flourish in countries where authority has been eroded (or has never been properly established) and the State is weak. Such organizations not only thrive on political weakness and instability, but also exacerbate the consequences of the breakdown of structures of authority. That is what occurred in a number of States in the 1980s and the first half of the 1990s. It is not coincidental that what some observers have termed the era of the failed nation-State is also the era of organized transnational crime. Acting from a "sanctuary" or safe haven, criminal organizations are able to extend their criminal activities into other countries, often developing important regional networks and sometimes extending their operations globally.

8. If this poses a long-term challenge, there are more immediate threats that are also the result of massive political dislocations. One of the crucial factors in the emergence of organized crime and drug trafficking in many countries in eastern Europe and new and emerging democracies and countries with economies in transition is the weakness of the new States. Few of the countries with economies in transition have managed to put in place effective criminal justice systems to combat organized crime; they have no legislation that allows them to target criminal organizations as such or that facilitates witness protection schemes, asset forfeiture and electronic surveillance, which are some of the essential tools in the prevention and control of organized crime. Furthermore, in many of those States, banking regulations are notably lax, thereby providing an attractive environment for money-laundering, both by indigenous criminal organizations and by groups from elsewhere. Weak State capacity, however, goes beyond the absence of appropriate legislation. Massive social and economic dislocation, hyper-inflation and unemployment, a limited tax base and a multiplicity of demands on the State have contributed to the "under-funding" of law enforcement, which typically has poor transportation, limited communications systems and relatively unsophisticated computer equipment.

9. Belarus, emphasizing the difficulties mentioned above, has stated that the legislative basis aimed at combating organized transnational crime is only in the process of formation in countries with economies in transition. Belarus has also drawn attention to the ability of criminal organizations to exploit the lack of adequate legislative measures and to avoid responsibility under national legislation, since there are considerable problems in obtaining the required evidence in the territory of other States. To a large extent, this is linked to trying to prove that crimes have been committed in the sphere of credit and financial relations, when considerable financial resources belonging to States have been transferred to foreign banks under false contracts with foreign partners, as well as in connection with activities such as trafficking in arms, drugs, nuclear materials and explosives.

C. The irrelevance of borders

10. Transnational criminal organizations are able to exploit the vast increase in global trade, the increase in personal mobility and the development of instantaneous communication systems. The incentive for trading across borders because of price differentials and market conditions is as compelling for illicit enterprise as it is for licit enterprise. The result is that many States become unwilling hosts for criminal organizations that meet the demand for illicit products. The concomitant of this, of course, is that the prototypical activity for organized transnational crime is smuggling in all its forms. On the one hand organized crime deals in goods that are themselves legal but that have been exempted from custom duties, taxes or regulations in one country but not in another. On the other hand organized crime deals in illegal goods such as illicit drugs and firearms. There are also illegal services that organized crime provides: gambling, false documentation and cross-border smuggling of migrants or contract killing. In the field of finance organized crime engages in counterfeit, cheque and credit card fraud and money-laundering. In the field of labour a major method is racketeering, a term used to describe a variety of tactics such as engaging in fraudulent deals or extortion through intimidation and blackmail or the abuse of legitimate positions for illegitimate ends, as in the case of businessmen or labour union and government officials. In the field of vice, organized crime engages in trafficking in women, which involves international prostitution and sexual slavery. Drug trafficking remains among the most profitable activities of organized transnational crime, though new opportunities for high profits have also arisen and are being exploited, such as arms trafficking and toxic waste disposal.

11. According to Canada, a significant role in the internationalization of organized crime has been played by the opening of borders, together with the changes on the world political scene, the development of communication technologies and the improvement of international transportation. All of these factors have contributed at different levels to the creation of a favourable climate for the opening of new markets and have eased cross-border activities. Organized crime groups have taken advantage of that situation. Italy has stressed that the progressive globalization of national economies and the gradual opening of national borders have created a favourable environment for the growing unification and interdependence of the activities of criminal organizations. According to Italy, this process was accelerated with the fall of the iron curtain and criminal organizations already present in western Europe expanded their interests and investments to countries in eastern Europe whose economies were considered easier to penetrate.

D. The importance of host countries

12. If some States have unwittingly or unwillingly become the home countries for transnational criminal organizations, others have become host countries, in which such organizations supply markets for illicit products and engage in a wide variety of illicit activities, including money-laundering. These countries are not necessarily weak, but nevertheless find it difficult to prevent the operation of those markets and to deal with criminal organizations that are often ethnically based and therefore difficult to penetrate. States in which the demand for illicit goods and services is high may become the location of branch offices or regional headquarters for criminal organizations. On occasions, they even provide the battleground in which rival organizations vie for supremacy.

13. Western Europe, for example, has become the focus of much criminal activity, as a lucrative market, as the destination of illegal migrants, as a source of luxury cars that are stolen and exported to other countries, as a battleground for rival organizations and as an attractive locale for extortion and for the infiltration of legitimate business, leading some observers to refer to a "common market of crime".[1] This is clear from the detailed information provided by Austria, which summarized the main trends of organized crime in that country. Its most salient feature is the diversity of groups from countries in eastern and south-eastern Europe, as well as Turkey, that are operating in the country. Criminals from Albania and Yugoslavia and its former republics are particularly active. Moreover, their links with politicians and army leaders in their home countries give them a high degree of impunity. For example, for the activities of some of the ethnic Albanian criminals who have settled in Austria, the control centre is in the Kosovo area in Yugoslavia.

Drug trafficking, prostitution, arms trafficking and crimes against property are their major activities. Organizations from Bosnia and Herzegovina and Yugoslavia are also active, with one organization, known as the Belgrade group, able to call on the special forces of the Yugoslav army for the commission of violent crimes. While groups from Poland and Romania are also active, even more prominent are the Solntsevskaia, Dolgoproudnenskaia, Georgian and Chechen groups from the former Union of Soviet Socialist Republics, all of which are involved in business crime and money-laundering. Austria has also been penetrated by criminal groups from Italy, including the Camorra, and by Asian criminal organizations.

14. North America is another attractive area for criminal organizations. Canada has reported that the five major groupings of criminal organizations operating in the country are outlaw motorcycle groups and Aboriginal, Asian, eastern European and Italian organized crime groups, while there is evidence that Colombian drug cartels and the Jamaican "posses" are also active. The capacity of criminal organizations to operate both domestically and internationally provides an important cushion in the event of a government clamp-down on organized crime at home.

E. Financial infrastructure

15. Another component of the new geopolitics is the financial infrastructure. The development of a global financial system, in particular the development of the offshore banking system, has provided enormous opportunities for the concealment and transfer of funds. The speed and ease with which capital can be moved around the global financial system, as well as the opportunities for obscuring sources of capital and blending licit and illicit money, have increased with the emergence of what has been termed "megabyte money".[2] According to that view, money is now best understood as a network that includes all the world's markets: stocks, bonds, futures, currency, interest rates, options etc.[3] Because of the growing number of systems to facilitate transactions, "megabyte money" is also enormously difficult to track and to control. The sheer volume of financial business that has developed as the investment economy has given way to the transaction economy has not been matched by the development of regulatory measures.[4] Not only do the creation of new stock exchanges and the growing popularity of future options and derivatives provide new opportunities for money-laundering, but they also make effective monitoring and control virtually impossible. The system has many points of access and makes it possible to trade anonymously, to move money rapidly and easily and to obscure both the origin and ownership of capital. The mobility of capital parallels that of the transnational criminals themselves.

16. Canada has reported that it has several characteristics that make it attractive as a money-laundering centre: proximity to the huge market in the United States, the porosity of the border that it shares with that country and the volume of legitimate financial flows. In addition, its stable currency and Government, advanced financial system, free movement of funds and democratic safeguards against police powers together make Canada inviting to persons engaging in international money-laundering. In general, the more sophisticated kinds of money-laundering operations that have affected Canada have had an international component. Organized criminal groups, particularly the Mafia from Italy and the United States are responsible for much of the money-laundering activity in Canada, while law enforcement agencies in Canada and the United States have noted that Asian organized crime groups in North America have been using Indian and Pakistan underground banking systems at Vancouver to move criminal proceeds to Hong Kong and other jurisdictions. According to Canada, the stock exchange has become another vehicle for money-laundering. Cash or tainted assets can be transformed into alternate financial instruments, as well as ownership of stocks and bonds.

F. Linkages between the licit and the illicit and the problem of corruption

17. Another component of the new geopolitics consists of the linkages between the underworld and the "upper world".[5] Organized transnational crime would be far less effective and less of a threat if it were completely isolated from the licit economy and society and its institutions. In reality, however, there are all

sorts of linkages and points of convergence between the licit and the illicit. An organized criminal group frequently enters into informal alliances with legitimate businesses or uses its own legitimate firms to provide cover for its illicit operations. While this can be advantageous for the criminal organization, it can have seriously debilitating consequences for the legitimate economy. For example, it has been suggested that one of the reasons for the present debt crisis in Japan may have been multibillion-dollar bad loans to Boryokudan members. The Boryokudan, whose membership has been estimated at 80,000, assassinated the manager of a major Japanese bank at Nagoya in September 1994, apparently as a warning not to collect overdue loans. The murder sent a shock wave through the Japanese banking community, discouraging other bankers from continuing to pursue the repayment of overdue loans. The same reports have estimated that 80-90 per cent of the uncollectible loans in Japan, which could total as high as 1 million million United States dollars, may be linked to the Boryokudan, which in the 1980s moved into the real estate and stock market business with monies borrowed from credit unions and banks. This has prompted former high-ranking police officials, as well as leading economists and bankers, to speak of the "Boryokudan recession" when describing the current financial malaise in Japan.[6]

18. If transnational criminal organizations reap considerable benefits from their links with the licit business and financial sectors, they also find it both necessary and advantageous to co-opt public officials, whether to obtain official documents or export licences, to help launder the proceeds of criminal activity or to provide intelligence. The linkages may be based on bribery, coercion or a mixture of the two. Organized criminal groups have demonstrated their preference towards "systemic" corruption designed to ensure the preservation of a congenial and low-risk home base or a comfortable environment in host countries. Such a method of operation may be characterized by widespread use of bribery and favours to ensure the malleability of key positions and agencies; political funding to ensure that politicians elected to office will be indebted to the criminal organizations; carefully targeted "payoffs" to law enforcement personnel to provide intelligence; and the provision of financial incentives to members of the judiciary to ensure that the penalties for criminal activities are either not imposed or are modest.* These links between the underworld and the "upper world" have a corrosive effect on governance. Indeed, systemic corruption is one of the ways in which criminal organizations develop a symbiotic relationship with the State.

19. This issue has been raised by the Holy See. There is an array of complex matters related to the links between corruption and organized crime, particularly when not only public officials were involved, but also the private sector and individual citizens. These problems are especially serious in developing countries and in countries with economies in transition. According to the Holy See, a series of measures are needed to deal with the situation, such as codes of conduct, disciplinary rules and penal sanctions, as well as greater transparency and simplification of administrative procedures. Furthermore, according to the Holy See, there is a need for training and education in respect for the law, freedom of the press and sanctions against corporate entities and individuals involved in corruption. Finally, the Holy See has recommended the eventual establishment of an international organization for the fight against corruption and of an international centre for information and the elaboration of standards for the control of and the fight against economic crime.

G. The rise of global cities

20. The last few decades have seen the emergence of global cities characterized by the concentration of financial power and the availability of highly developed banking and financial systems. In some cases, these cities are also national capitals or administrative centres and, therefore, provide opportunities for the intersection of organized crime and the political and economic élite. Such cities also act as transportation hubs with links to each other as well as to the hinterland. Their advanced telecommunications systems

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*For an excellent discussion of corruption, see Ethan Nadelmann, *Cops Across Borders* (University Park, Pennsylvania, Pennsylvania State University Press, 1993). The way systemic corruption is used here is close to what Nadelmann terms "institutionalized corruption".

facilitate the transfer of information and money, while their large, cosmopolitan populations facilitate both anonymity and criminal contact among different ethnic and national groups. Most large global cities pose formidable challenges for Governments; and some of their districts are no-go areas for law enforcement, ideal environments for both random victimization and organized crime. Global cities also provide opportunities for criminal synergism, as different national groups pool their talent and expertise. Criminal cosmopolitanism of this kind and the ethnic diversity of global cities reflect another feature of the new geopolitics: the importance of migratory patterns, diasporas and ethnic networks.

H. Migration, diasporas and ethnic networks

21. The worldwide migration of settlers, labour migrants and asylum seekers has created ethnic diasporas in many countries that serve as nesting places and bridgeheads for persons who engage in organized transnational crime. The closed nature of ethnic communal groups, enhanced by language barriers and an often imported distrust of the police, make immigrant communities in many countries ideal recruiting and operating grounds for criminal organizations.

22. Numerous studies have demonstrated that the vast majority of migrants are law-abiding citizens. Among those who emigrate, however, are members of criminal organizations, who bring with them their criminal skills and knowledge and their criminal affiliations and contacts. Chinese, Italian, Nigerian and Russian diasporas have all contained criminal elements. This should not be surprising: when criminal organizations come under pressure in their home country, either from law enforcement or as a result of internecine warfare, one response of some of the members is to migrate to other areas or States where the risks are lower and conditions are generally more suitable to them. On some occasions, such transplanted criminal networks may become more powerful than indigenous organized criminal groups. In Australia, for example, the major criminal organizations include not only the Italian 'Ndrangheta, the Japanese Boryokudan, the Chinese Triads and home-grown criminals of Irish and British descent, but also gangs originally from Lebanon, Turkey, the United States and countries in south-east Asia, Latin America and eastern Europe.[7] As one criminologist has noted, "Australia has acquired many splendid new citizens but some particularly nasty ones too."[7] Moreover, some of the criminal groups have succeeded in establishing at least some semblance of the symbiotic relationships that they had developed in their original home countries. In a confidential assessment completed by the Australian Federal Police, it was noted that Italian organized criminal organizations had penetrated a number of government and non-government agencies and at least one political party and had entrenched themselves in legitimate business to give themselves an air of respectability.[7] Even when they have not achieved this level of penetration, transplanted criminal organizations can still pose formidable challenges to law enforcement, as Chinese organized criminal organizations seem to be doing in South Africa and Russian organized criminal organizations are doing throughout much of Europe.

23. The focus on migration, however, should not obscure the simple fact of increased mobility. The ease and speed of cross-border travel provide new opportunities for criminals while also making them more elusive. Nigerian drug trafficking groups, for example, have used this increased mobility to expand their trafficking activities into much of southern Africa. Moreover, organized crime has far more fundamental roots than migration, not the least of which is the crisis of structures of State authority that is prevalent in many parts of the world. There is also an important linkage between many of the pressures that lead to migration and the growth of organized crime. Perceived or real failures of States to satisfy demands of their citizens, the prospects of economic betterment elsewhere and the inability to provide legitimate outlets for entrepreneurial skills encourage many people either to seek another country to live in or to turn to avenues for advancement that lie outside the licit economy.

I. Parallel economy

24. In recent years, black markets or underground economies have become a global phenomenon. The scale of these markets and their overall effect on the global economy are impossible to assess as their very nature

makes it extremely difficult to obtain accurate information. Some estimates nevertheless exist. In 1988 an Italian research institute estimated that the criminal economy in Italy had amounted to 12 per cent of the national economy in the mid-1980s.[8] What is less obvious than the fact that black markets are enormously profitable is the fact that there are links between black markets in different products, as well as an often blurred line between the licit and the illicit. Black markets are both highly sophisticated and interactive. What is at work is no longer individual illegal markets, but a systemic, transnational, multisectoral "parallel economy" comprised of networks of mutually supporting "submarkets". This "parallel economy" often has its own labour exchange, distribution methods and information networks. In addition, it also has its own financial and banking system, as well as its own firms, which display a degree of entrepreneurial flair, managerial skill and organizational adaptability that matches or even surpasses that of many licit transnational businesses.

25. While criminal organizations benefit considerably from the exploitation of market demand in their host States, the impact on the economy of the home State is more problematic (leaving aside the deleterious impact on political and social life). For example, according to the Drug Enforcement Administration of the United States, the amount of money derived from drug trafficking that is flowing to the Colombian cartels has been estimated to be as much as US$ 30 billion a year.[9] The negative effect of such an amount of money on the economy of a developing country or on an economy in transition cannot be overemphasized. An influx of foreign currency of that magnitude may lead to the devaluation of the local currency which, in turn, is likely to result in the decline of local industry and an increase in speculative investment. Furthermore, the climate of violence often present in the operations of organized criminal groups discourages foreign investment and leads to domestic capital flight, as well as increased costs to the business sector as a whole because of the need to invest heavily in security.

26. Belarus has underlined some of the above-mentioned concerns, including the attraction of foreign investment in the national economy. Belarus has stated that it is important to be able to obtain reliable information on the legality of the origin of the financial resources available for investment in order to avoid the possibility of injecting into the economy capital stemming from criminal activity.

J. Strategic alliances

27. One feature of traditional geopolitics that finds a ready counterpart in the geopolitics of organized transnational crime is the prevalence of alliances. In traditional geopolitics, alliances have been used to augment national power, to provide predictability in relationships, to establish commitments and to protect the weak. In the new geopolitics, however, alliances among transnational criminal organizations resemble not traditional military alliances so much as strategic alliances among transnational corporations. This is not to suggest that all linkages among criminal organizations can be characterized as strategic alliances. The diversity of criminal groups is accompanied by wide variations in the linkages among them. Some are ephemeral, some enduring; some are based on short-term expediency or opportunism while others result from a calculation of long-term interests and benefits that reflect the same kind of strategic planning undertaken by transnational corporations. Strategic alliances, however, have several qualities that set them apart from other linkages: they are long-term, they involve "tight operating linkages", they are based on some kind of formal or tacit agreement and they are underpinned by mutual expectations of continued cooperation.[10] At the other end of the spectrum are ad hoc arrangements or one-time deals, in which criminal organizations come together for a specific transaction without any notion that the relationship will become more enduring.

28. One of the most important reasons for the formation of strategic alliances is the desire to distribute, share or reduce risks. Strategic alliances enable licit firms to tackle opportunities that might otherwise be too risky.[10] Similarly, they allow criminal organizations to make certain kinds of risk more acceptable to them. Transnational criminal organizations seek to reduce risks to their products, their personnel, their profits, their organizational integrity and their leadership. Strategic alliances can also be an important means of entering new markets that would otherwise be unavailable to one of the parties. In return the partner may

obtain access to new products. There is also an element of risk reduction in market partnerships of this kind: criminal organizations entering new regions or markets have to negotiate with the illicit power structure in order to succeed in circumventing the licit structure. The more they can engage the illicit power structure in their activities the better the prospects for success. The Colombian-Sicilian link, for example, has been crucial in the development and exploitation of major cocaine markets in western Europe. For the Sicilians the alliance has offered a new product line; for the Colombians it has offered access to existing distribution channels and local knowledge. "Think globally, act locally" is advice that is often as compelling in the criminal world as it is in the world of licit business. Strategic alliances offer a way to follow that advice.

K. Global information systems

29. Another component of the new geopolitics is the development of global information and communication systems that are linked to and complement the global financial and transportation systems. This development, however, brings with it a new set of vulnerabilities for States, especially those in the post-industrial stage of development, that could all too easily be exploited by transnational criminal organizations, as well as by criminals acting individually. Ironically, these vulnerabilities are also asymmetrical: the greater the level of sophistication, the greater the vulnerability. As societies become more dependent upon linked communication and information systems, the possibility that those systems will be compromised or disrupted becomes greater and the consequences of such incidents become more catastrophic. The disruption of the systems that facilitate national and global financial transactions, stock markets, air traffic control, the collection of taxes and the operation of social security, let alone key components of the military and intelligence and law enforcement infrastructure, could have far-reaching effects on the capacity of society and government to function effectively.

30. Sophisticated computer "hackers" not only are notoriously difficult to trace and to catch, but also represent a new form of individual empowerment that could have far-reaching, damaging consequences. One person with a computer, a modem and the requisite knowledge and skills has the capacity to wreak havoc on national and global information systems, even those that have security mechanisms and firewalls built into them. Moreover, there are multiple opportunities for the computer "hacker" to protect his or her own anonymity through a process that is the "cyberspace" equivalent of the establishment of companies as fronts. When this form of individual power is linked to the activities of transnational criminal organizations, the threat takes on new dimensions. In a recent and persuasive assessment of the nature of organized crime in the twenty-first century,[11] it has been suggested that the computer "hacker" will be an indispensable member of any serious criminal organization. To expect transnational criminal organizations to refrain from exploiting these new opportunities and vulnerabilities is wishful thinking. The growing convergence of organized crime with white-collar crime is already evident in countries with economies in transition, where licit businessmen are sometimes coerced into engaging in fraudulent activities.

31. Once transnational criminal organizations have developed their use of global information systems primarily for new avenues of financial gain, they will have the capability to inflict major damage on the system. Global information systems open up new opportunities not only for fraud and embezzlement, but also for disruption and extortion. To the extent that transnational criminal organizations feel threatened by law enforcement efforts, they might even exhibit the will to engage in disruptive activities of this kind. Alternatively, exhibiting a capacity to damage crucial nodes in the information and communications infrastructure could itself enhance the coercive power of these groups. In effect, the combination of the drug cartel or organized crime group and the computer "hacker" could prove to be both dangerous and intractable. Transnational criminal organizations are able to take full advantage of such opportunities partly because they are structured in ways that maximize flexibility and encourage innovation.

L. Political unrest and organized transnational crime

32. The post-cold war world is characterized not only by the emergence of the "global village", but also, somewhat paradoxically, by growing factiousness and fragmentation, only part of which can be attributed to the legacy of the cold war. Organized transnational crime benefits from both of these phenomena. The tendencies towards globalization and economic interdependence have provided new opportunities for criminal organizations. At the same time, the forces of disintegration ("the retribalization of large swaths of humankind by war and bloodshed: a threatened balkanization of nation-States in which culture is pitted against culture, people against people, tribe against tribe") offer other opportunities that are seized just as eagerly.[12] One of the great strengths of organized transnational crime is that it is an equal opportunity entity, exploiting developments of all kinds that can in any way be used to its advantage. Regional conflicts, for example, offer numerous opportunities for trafficking in arms. They are sometimes characterized by "arms-for-drugs" deals as ethnic groups seek ways of acquiring the means to continue their armed struggles. This has been an important feature of the conflict in the former republics of Yugoslavia, one that is likely to be replicated elsewhere. Linkages between the warring parties and criminal organizations willing to take the risks of dealing with them tend to be mutually beneficial. In some cases, however, the criminal organizations are cut out as the participants in the conflict engage in criminal activities of their own, a phenomenon one journalist has described as "fighters turned felons".[13] Italy has pointed out that the conflict in the former republics of Yugoslavia has favoured illicit activities and has rendered easier the infiltration of the economies of the countries involved in that conflict by Italian criminal groups and other criminal organizations.

33. This phenomenon seems likely to grow as ethnic factions, insurgency movements and terrorist groups all find it more difficult to obtain State sponsorship for their activities. Criminal endeavours provide one of the few substitutes enabling them to finance and sustain their political struggles. This has been reflected, for example, in the large number of Tamils who have been arrested in Europe and North America for drug trafficking. While some might have been in the drug trafficking business simply for profit, others were "clearly linked to fund-raising for the Tamil Tiger separatists".[13] In Angola, in contrast, the criminals have both gone into business for themselves and established links with organized crime: "UNITA insurgents have raised money by selling off poached elephant ivory and by throwing open State-owned diamond fields to smugglers who cut UNITA in on profits."[13] In the short term, not only do these links add to the profits that accrue to organized transnational crime, but they also tend to perpetuate conflicts and make peace more elusive. In the longer term, however, they may lead to the emergence of transnational criminal organizations that have their roots not in crime but in war. Such groups could provide particularly formidable challenges to Governments and law enforcement agencies throughout the world, as they are likely to have even fewer inhibitions about the use of violence than other criminal organizations.

M. The prevalence of network structures

34. Criminal organizations represent a new kind of "sovereign-free" actor based on what has been termed networks of affiliation that are difficult for law enforcement to penetrate. Ethnic and kinship ties, together with the slow creation of trust, are important defence mechanisms for criminal organizations, and so are network structures. The structures are resistant to disruption and have a degree of resilience that other forms of organization lack. The network is an ideal form of organization for maintaining organizational integrity. Because networks are characterized by considerable redundancy, linkages can be maintained through a variety of different connections. The connections can easily be replaced if broken, enabling the organization to reconstitute itself without great difficulty. Furthermore, even if the periphery of a network is infiltrated, the core can still be insulated. This is partly because of what is termed loose coupling. In organizations or systems where the components are tightly coupled, disturbance or dislocation in one component can create a damaging chain reaction. In contrast, "loose coupling gives time, resources, and alternative paths to cope with the disturbance and limits its impact".[14]

35. The value of network structures is increasingly being recognized in the commercial and industrial world, where some businesses are finding that alternatives to traditional hierarchy are both more efficient and more effective in terms of innovation and the achievement of goals. Transnational criminal organizations, however, have been in this position for some time and have instinctively developed a form of organization that offers distinct advantages over any other.

N. The sophistication of transnational criminal organizations

36. In addition to the development of network structures that are highly adaptable and resilient and absorb the costs inflicted by government and law enforcement operations, transnational criminal organizations have developed sophisticated strategies to manage the risks that they confront. These strategies involve efforts to prevent, control and absorb risks, especially risks to the leadership and to the integrity of the organization. The use of corruption to create an environment more suitable to crime, for example, is a means of preventing risks from arising in the home base; violence may be used to control risks by eliminating persons in government and law enforcement agencies who are pressing hard on the criminal organizations. Another control measure is to ensure that activities are compartmentalized both in terms of information and participation. The leaders are particularly well insulated by the layers of go-betweens who stand between the street crimes and the criminal headquarters. In addition, traces of criminal activity are further camouflaged by divisions of labour across boundaries. Meeting the challenge that transnational criminal organizations pose to national and international security requires not only a high degree of commitment by Governments, but also well-coordinated strategies at the national, regional and global levels that are sustained over the long term. It also requires targeting the things that transnational criminal organizations value most, namely, assets and proceeds, organizational integrity and leadership, contrary to current law enforcement efforts, which are largely designed to seize products, arrest personnel and disrupt profit-making or money-laundering activities. More comprehensive strategies that target the leaders, their accrued wealth and the organization itself are likely to have much more impact.

37. Transnational crime has grown out of the economic interdependence that has been regarded as a stabilizing and pacifying influence in international relations. Unfortunately, the same developments that have encouraged the growth of licit economic activity have, to a large extent, also helped to promote illicit activity. In a sense, organized transnational crime can be understood as the dark side of interdependence, one that poses major challenges to national and international security. At the same time, organized transnational crime is also fed by war, instability and the crisis of State authority that exists in many parts of the world. While these highly diverse sources of nourishment make it difficult to eliminate the conditions that facilitate organized transnational crime, both the structures of the criminal organizations and their risk management strategies make them formidable adversaries for Governments.

II. THE CHALLENGE POSED BY ORGANIZED TRANSNATIONAL CRIME: A COMPARATIVE ANALYSIS

38. Discussions about action against organized transnational crime often assume, sometimes implicitly, that if only Governments devoted more efforts and resources at the national level and increased cooperation at the bilateral level, they could make considerable inroads against organized transnational crime. What is rarely done when dealing with this issue, however, is to provide a net assessment, that is, an assessment of the capabilities of organized transnational crime on the one side and government and law enforcement on the other.

39. States are traditionally organized, conceptually, institutionally and operationally, to contend with problems posed by other States. States are not equipped in anything like the same way to deal with threats from transnational criminal organizations that are not only elusive, but also, for the most part, anxious to avoid direct confrontation with either the State that is used as the home base or those States where their

criminal activities are undertaken. International law and conventions designed to regulate relations among States are still ahead of international criminal law and efforts to deal with criminal activities that cross national borders. Emphasis is placed on national law, which is faced with the difficulties involved in dealing with the relative novelty of organized transnational crime. There are efforts to overcome those difficulties. Multinational law enforcement task forces, the use of extradition and mutual legal assistance treaties and the growing willingness to provide law enforcement training and judicial assistance to other countries are all part of an attempt to elaborate the instruments and mechanisms necessary to counter "sovereign-free" criminal actors. There remains, however, much to do.

40. Another related issue is that law enforcement is, by nature, predominantly reactive. This reactive nature means that the efforts and resources spent by government are out of all proportion to those spent by criminal organizations. Perhaps the best example of this is money-laundering. The act itself may take minutes, given the possibilities offered by modern technology, while the investigation of such cases may consume considerable law enforcement resources for months or even years. In short, it is easier to engage in organized criminal activities than to prevent or prosecute them.

41. Another related advantage of criminal organizations is that they have a clear and simple agenda. Criminal organizations are concerned only about maximizing profits while duly constituted authorities have to balance their actions against organized transnational crime with a variety of other considerations and objectives at acceptable risks. Rightly and legitimately, they have to be concerned about respect for human rights and civil liberties. Wiretapping, therefore, can be used only under specific circumstances and according to certain rules. Important as they are in reducing to a minimum the intrusion of the State on individual liberty, the result of these restrictions is that law enforcement is sometimes unable to act as promptly as needed in order to maximize its effectiveness. Another example of the constraints faced by Governments can be seen in the difficulty of disrupting illicit trade without also disrupting licit trade. Efforts to adopt more stringent or more comprehensive inspections inevitably conflict with the desire to facilitate free trade. The fact that competitive advantage increasingly depends not only on the quality of goods but also on the promptness of delivery adds another barrier to the imposition of greater controls. In other words, States have multiple objectives and multiple constituencies and have to accept trade-offs that, while both necessary and legitimate, undermine efficiency and effectiveness in the struggle against organized transnational crime.

42. Other characteristics of the two kinds of actors contribute to increasing the threat posed by organized transnational crime. States are essentially fixed and static, with complex and sometimes rigid organizational structures, and a high degree of transparency in their operations. Transnational criminal organizations in contrast tend to be highly mobile, elusive and largely covert organizations. States are bound by rules and regulations and are accountable to their citizens. Criminal organizations in contrast, by their very nature, violate rules and conventions, while their lack of accountability gives them enormous freedom to manœuvre. The overall availability of readily disposable resources is another relevant issue. Criminal organizations do not have parliamentary votes and strict controls on the allocation of resources, which may prevent funds from being used with dispatch and ingenuity. They do have to pay both corruption and operational costs, but these pale in comparison with the programmes many Governments need to fund.

43. All this suggests that a comparative analysis, done not in terms of raw power but in terms of each side's ability to achieve its objectives relative to the other, favours transnational criminal organizations over States. One area where this applies most clearly is what might be termed the competition in infiltration. Criminal organizations and Governments generally try to infiltrate each other. For Governments, infiltration can provide evidence that is crucial to the law enforcement effort. For criminal organizations, infiltration of the State apparatus can provide intelligence and enable the criminal group to devise and implement more effective defensive measures. For both sides, this is an important strategy. In the final analysis, however, this is something that is easier for transnational criminal organizations to achieve than it is for Governments. Governments have many points of access that are susceptible to infiltration. The infiltration of a government or a law enforcement agency requires access to, and either bribery or intimidation of, someone who is already

in place. This is not the case the other way around. Infiltration requires placement within the organization, a task made much more difficult by criminal bonding mechanisms, whether familial or ethnic, an inherent suspicion of outsiders and a propensity for violence. In short, it is much harder for law enforcement personnel to infiltrate criminal organizations, at least at a high enough level to do significant damage. Infiltration of transnational criminal organizations is a high-risk activity and the benefits are not always commensurate with the risks involved. In the case of criminal infiltration of government, the calculus is the opposite - low risk and high yield. Governments are able to compensate to some extent through a strategy of encouraging defections by members of the organizations. Defection and subsequent court testimony may provide invaluable information and inflict considerable damage on criminal organizations, as has been evident in Italy, where the revelations of the so-called *pentiti* have facilitated unprecedented victories over the Mafia. Such victories, however, are rather rare.

44. The implication of this analysis is that organized transnational crime is likely to go from strength to strength. While it is difficult to predict with great certainty or precision the future direction of organized transnational crime, a number of possibiiities can be identified, some of which involve simply the consolidation of existing trends while others involve a qualitative shift in the power and efficacy of organized transnational crime. Among the former possibilities, it is likely that there will be a consolidation of strategic alliances among criminal organizations. Just as strategic alliances have become more widespread and entrenched in the licit business world, so they are likely to become an even more central feature of the operations of transnational criminal organizations. While this is disturbing enough, the situation could become even more worrying if transnational criminal organizations follow another trend in the corporate world, that towards full-scale mergers.

45. There is also likely to be a consolidation and a gradual blurring of different kinds of crime and of the organizations perpetrating them, coupled with an increase in the level of violence threatened or implemented by transnational criminal organizations. The availability of the capabilities to engage in such threats is already apparent. Nuclear material smuggling, for example, has become rife. The fact that there have been few cases involving weapon-grade material may allay concerns about proliferation, but it does not mean that even some of the lower-grade materials could not create widespread death and destruction if used in conjunction with conventional explosives. In a similar vein, the activities of a religious sect in Japan illustrate the capacity of non-governmental groups to develop chemical weaponry. Biological toxins are also widely used in research and are not as stringently controlled as might be expected. The implication of all this is that criminal organizations could increasingly obtain access to destructive capabilities that could be used for extortion against States, cities or corporations. Proving credibility will simply require that those being extorted find evidence that the organization really does have the material to inflict considerable harm. Similarly, criminal organizations, by acquiring the expertise of skilled computer "hackers", may be able to threaten to disrupt major communications and information systems, as well as to obtain access to bank and corporate funds.

III. RESPONSES TO ORGANIZED TRANSNATIONAL CRIME

46. The preceding analysis suggests that criminal organizations have certain advantages over States and that the challenge posed by organized transnational crime, at the national and international levels, is likely to intensify rather than abate. States can, however, take certain actions that may help to avert, or postpone, some of the more troublesome scenarios. The World Ministerial Conference and the Naples Political Declaration and Global Action Plan may be regarded as a catalyst for such actions. National successes, such as the arrest of the leaders of the Cali cartel, and the priority attention given to action against organized transnational crime by world leaders on numerous occasions, including during the commemoration of the fiftieth anniversary of the United Nations, as well as the increasing willingness of the international community to place corruption under public scrutiny, are all encouraging developments.

47. The central theme in all the information provided by States on this subject is the need to furt international cooperation which, if integrated with national efforts, will form a comprehensive stra organized transnational crime. International cooperation is deemed essential at all levels, th bilateral, regional and multilateral levels, while a premium is placed on coordination and coope national and international levels.

48. Argentina has pointed out the merits of common regional strategies and measures again transnational crime, while Australia, Canada, Philippines, Republic of Korea and Turkey have dra to the growing number of their bilateral agreements on extradition and mutual assistance in crim In addition, Australia has indicated its compliance with the London Scheme Relating to the Fugitive Offenders and the Harare scheme for mutual assistance in criminal matters, establi Commonwealth, as well as its efforts to promote cooperation at the bilateral and regional level police liaison personnel to a number of its embassies. Such a course of action has been followe which has also engaged in promoting regional cooperation among its neighbouring countries as for international cooperation. Canada has referred to recent successes against organized crime laundering, such as the "operation green ice", made possible by cooperation involving the law agencies of several countries. The Philippines has emphasized that, unless there is effective a international cooperation, any attempt to combat organized transnational crime in all its dimen an exercise in futility.

49. Regarding action at the national level, responding States have indicated that they have be the Naples Political Declaration and Global Action Plan in reviewing their policies and strat organized transnational crime and in putting in place new legislative and regulatory measures, establishing new structures for the prevention and control of organized transnational crime.

50. Argentina has pointed out its understanding of the fact that organized transnationa phenomenon that requires a reformulation of traditional policies that have been conceived to res complex model of criminality. Consequently, Argentina has amended its legislation, or adopt to deal with the problem more effectively. Its legislation includes provisions that foresee the reducing or excluding sanctions for those who turn State evidence in cases of organized transna as well as the protection of witnesses and victims. The offences of participation in a criminal and conspiracy have been included in the Argentine penal code, whose envisaged reform wi number of activities in which criminal organizations engage, such as trafficking in minors organizational structures, Argentina has established new coordination mechanisms to increa Finally, Argentina is placing increased emphasis on creating a culture of legality through measures.

51. The response by Australia to the threat of organized crime has developed into a compre measures representing a "whole-system" approach, whose principal features include the specialized agency, emphasis on cooperation and coordination between the different levels of go between law enforcement agencies, legislation targeting key aspects of organized crime, a approach to the problem, based on high-quality strategic intelligence and assessments. Since n afford to be complacent in its response to organized crime, the law enforcement activities of Government have been reviewed in the light of the globalization of organized crime and the external threats to the country from that source. As a result of the review, Australia has e Commonwealth Law Enforcement Board, to be its principal adviser on law enforcement p Office of Strategic Crime Assessments, as a source of "over-the-horizon" strategic assessments emerging threats in the criminal environment.

52. Austria has, since 1993, introduced offences related to founding, participating in and l proceeds of criminal organizations. The same amendments to its Penal Code have made mon an offence. The legislation has proved effective in combating organized transnational crime, w

Austria to respond to requests for judicial cooperation. Austria also has in place legislation for the protection of witnesses in cases involving organized transnational crime, while a draft law currently under review would introduce special investigative measures, including electronic surveillance. A proposed further amendment to the Austrian Penal Code would introduce a number of measures to facilitate seizure and forfeiture of criminal proceeds, while adjusting accordingly the existing legislation on extradition and judicial cooperation. Austria has also established a special operational unit at its Ministry of the Interior to fight organized transnational crime.

53. Canadian legislation against organized transnational crime spans a broad area, placing emphasis on depriving organized criminal groups of their financial means and proceeds. Substantive legislation can be found in the Canadian Criminal Code, including the Food and Drugs Act, the Narcotic Control Act and the Proceeds of Crime Act. The latter allows bankers and financial institutions to report suspicious transactions to the police without risk of liability to customers for breach of client confidentiality. The Seized Property Management Act, which came into force in 1994, empowers the Canadian Government to manage and dispose of property representing the proceeds of crime and applies to cases where property is forfeited to the Government. The Act also permits the proceeds of disposition of such property to be shared with Canadian law enforcement agencies and with other Governments whose law enforcement agencies have participated in investigations leading to forfeiture of property. In connection with this legislation, Canada has established a Seized Property Management Office, which provides pre-seizure planning. The Proceeds of Crime (money-laundering) Act of 1991 has established record-keeping requirements in the financial services industry in order to facilitate the investigation and prosecution of offences created under Canadian legislation, making it an offence to contravene or to fail to comply with those requirements. The principal requirements imposed on financial institutions are set out in the Proceeds of Crime Regulations, which oblige financial institutions governed by the regulations to prepare a large cash transaction record when cash transactions totalling 10,000 Canadian dollars or more are made by or for the same person on the same day. The above-mentioned legislative and regulatory measures are complemented by the Mutual Legal Assistance in Criminal Matters Act of 1988 and the Immigration Act, which was amended in 1993 to respond to the new challenge posed by organized transnational crime. In terms of structures designed to improve coordination and efficiency in combating organized transnational crime, Canada has created the integrated anti-drug profiteering units and the Anti-Smuggling Initiative and has put in place a new witness protection programme.

54. Guided by the Naples Political Declaration and Global Action Plan, Chile has adopted new legislation on drug trafficking and money-laundering. The legislation is geared towards facilitating international cooperation, which Chile is actively promoting, by hosting international meetings such as the Second World Police Congress, held at Santiago from 3 to 6 October 1995*. National legislation has been supplemented by new organizational structures designed to increase the effectiveness of the prevention and control of organized transnational crime, such as the National Council for the Control of Narcotic Drugs (CONACE), the Directorate of Public Security and Information and the Council for the Defense of the State. Paying particular attention to the prevention and control of corruption, Chile has established a National Commission on Public Ethics, which has formulated a number of proposals, including one on elevating transparency of the public service to the constitutional level.

55. While not affected by organized transnational crime, Cuba had been creating the basic conditions required for an immediate response to the problem. Cuban legislation has made association with criminal intent an offence and has proscribed as punishable offences those types of behaviour associated with the most common forms of organized transnational crime, but has made no provision for controlled deliveries and electronic surveillance. The Cuban Penal Code provides for the seizure of assets acquired through the commission of a crime and of the proceeds therefrom.

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*See the note verbale dated 1 November 1995 from the Permanent Mission of Chile to the United Nations addressed to the Secretary-General (A/C.3/50/4).

56. In Japan, measures against organized crime are oriented towards striking an effective blow against both human and material resources of criminal organizations. Both legislation and law enforcement methods are geared towards achieving that goal.

57. Guided by Economic and Social Council resolution 1995/11, Panama has prepared proposed legislation against organized transnational crime, particularly with regard to trafficking in arms and stolen motor vehicles.

58. The Government of the Philippines has submitted to the national congress a number of draft laws, including a bill against terrorism, as well as legislation protecting intellectual property, copyright and trademarks.

59. The Republic of Korea has provided information on its legislative measures against organized transnational crime, which include the enactment of an Act on Confiscation against Crime of Public Officials. The Republic of Korea is pursuing a number of initiatives, including the reinforcement of immigration controls and the establishment of a special investigation unit and an institution with the responsibility to fight against organized transnational crime.

60. Another theme emphasized by several States, including Australia, Canada, Cuba, Italy, Japan and Philippines, is the need to attack the material resources of organized transnational crime. In its Crime Control Act of 1995, for example, the Philippines has moved towards money-laundering a criminal offence through measures for "punishing the funnelling, transfer or use of illegally sourced or procured funds or property to legitimate enterprises or transactions and providing penalties therefor". The effectiveness of legislation of this kind has been underlined by Australia, which has noted that confiscation of the proceeds of crime has been in effect for eight years in that country and has proved to be an effective tool in the fight against organized crime. Since December 1991, Australia has also established a Confiscated Assets Trust Fund, designed to ensure that confiscated funds are used against the criminal world.

61. Many Governments have emphasized the need for increased technical cooperation to combat organized transnational crime. Practical assistance is necessary not only to upgrade the skills of personnel and to elaborate and implement appropriate measures, but also to strengthen the technological capacity of law enforcement agencies. The need to increase the exchange of knowledge, expertise and information has also been highlighted by States. These points have been stressed by Belarus, Bolivia, Holy See, Panama and Turkey, while Japan has expressed its willingness to strengthen technical cooperation activities and to provide personnel upon request.

IV. ARRIVING AT A COMMON CONCEPT OF ORGANIZED TRANSNATIONAL CRIME

62. Several Governments, in explaining their stance towards a convention against organized transnational crime, have mentioned the lack of an agreed definition of organized transnational crime. Several other Governments do not consider the lack of an acceptable definition of organized transnational crime an insurmountable obstacle to the elaboration of such a convention. Those Governments have emphasized the need to counter this form of crime at the global level and the positive advocacy and "peer pressure" effects that such a convention would produce. Another position taken by Governments consists of placing emphasis on the threat posed by organized transnational crime rather than on the individual activities in which criminal organizations might be engaged at any given point in time. This appears to stem from the understanding that the flexibility and diversity displayed by organized transnational crime make it more productive to focus on characteristics rather than on activities.

63. While there is no generally acceptable definition of organized transnational crime, there appears to be a common understanding of the salient elements of this form of criminal activity. For example, Qatar has

provided an analysis of the elements and features of organized crime. Qatar considers organized crime to be "a continuing group of individuals who resort to crime, violence and deliberate corruption, for material gain and dominance". Analysing further the elements contained in this description, Qatar has emphasized the continuing nature of the operations of criminal organizations, as opposed to temporary or ad hoc formations, violence as a means of deterrence which is effective in preventing informants and witnesses from facilitating the work of law enforcement agencies, and the reliance of criminal groups on corruption. Profit-making and the achievement of dominance are considered the primary objectives of organized crime. Among the main features of organized crime that have been highlighted by Qatar are a pyramidic structure, with distribution of roles and functions, internal rules of allegiance and conduct, and systems of distribution of influence, which serve to avoid competition and to resolve differences and conflicts. Based on the elements contained in paragraph 12 of the Naples Political Declaration and Global Action Plan (A/49/748, annex, chap. I), Turkey has defined organized crime as crime committed by groups organized, regardless of form, for the pursuit of criminal activities by resorting to violence, intimidation or corruption for the achievement of profit.

64. It should be recalled that the Naples Political Declaration and Global Action Plan list the following six characteristics of organized crime: (a) Group organization to commit crime; (b) hierarchical links or personal relations which permit leaders to control the group; (c) violence, intimidation and corruption used to earn profits or control territories or markets; (d) laundering of illicit proceeds to further criminal activity and to infiltrate the legitimate economy; (e) the potential for expansion into any new activities beyond national borders; and (f) cooperation with other organized transnational criminal groups.

65. The greater the number of the above-mentioned characteristics or elements in a given criminal organization and the stronger their presence, the more it can be said of the criminal organization that it meets the defining criteria of organized crime.* In this vein, organized crime could be described more concisely as a form of economic commerce that uses illegal means, involving the threat and use of, *inter alia*, physical force and violence, extortion, intimidation or corruption, as well as the provision of illicit goods and services. Since organized crime is innovative and takes advantage of the particular business opportunities that are available, it is able to take on many forms. Domestic organized criminal groups typically have a layered structure; thus, street operators who engage in the provision of illicit goods and services and in extortion or violence, or threaten to use violence, are carefully isolated from high-ranking members of the group to which they belong. The high-ranking members typically operate legal organizations as fronts, which also employ non-members to project an image of respectability, thereby establishing and maintaining trust. The separation of illegal activities from legal appearance can be greatly enhanced when the "brain" and "muscle" of organized crime are physically separated. This can be further enhanced by operating legal and illegal businesses in different countries with different jurisdictions. One of the characteristics of organized crime is the utilization of interjurisdictional and international barriers to its own advantage.

66. The transnational reach of organized crime is an outflow of its inherent logic. States are separated by borders that not only divide land, but also mark different legal systems, different levels of economic development, different demand patterns and different political cultures. The exploitation of these differences is a central feature of organized transnational crime. Smuggling goods (ranging from cigarettes to stolen cars) and people (in the form of cheap illegal labour) across borders requires intelligence, contacts, protection and safe houses - in short, an organization. Border areas and other points of entry such as seaports and airports are therefore conducive to the emergence of organized transnational crime. The selective permeability of the border serves both as a source of exploitation and as a barrier to hide behind. The border exists for the law enforcement officers of the respective States (with some exceptions, as in restrictively regulated border-region

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*Some lists enumerate more than six elements. One definition offered by the Netherlands adds "the application of internal sanctions" and "making use of front firms" as additional elements (Centrale Recherche Informatiedienst, *1991 Jaarverslag* (The Hague, Centrale Recherche Informatiedienst, 1991), p. 17).

hot pursuit operations) and it exists for ordinary law-abiding citizens on both sides of the border. Some cross-border traffic, notably electronic money transfers but also air and sea traffic involving smaller craft, is notoriously hard to control. The enormous increase in the container business has made the checking of all incoming and outgoing merchandise in containers an impossibility since it would slow down world trade to unacceptable levels. The revolution in communications, including the scrambling of voice communications and the encrypting of Internet communications, has created opportunities that make transnational criminal networking an increasingly safe activity.*

V. THE OPPORTUNITY FOR A CONVENTION OR CONVENTIONS AGAINST ORGANIZED TRANSNATIONAL CRIME

67. Pursuant to Council resolution 1995/11, the Secretary-General requested the views of States on the opportunity for a convention or conventions against organized transnational crime. Ten of the 20 States that responded were favourably disposed towards a convention or conventions against organized transnational crime. Three States expressed reservations on the possibility of elaborating a general convention against organized transnational crime, while two favoured the elaboration of conventions against various aspects of organized transnational crime or on specific modalities of international cooperation against organized transnational crime. One State opposed the elaboration of any new instrument or instruments against organized transnational crime. During the World Ministerial Conference, held at Naples, support for a convention or conventions against organized transnational crime was expressed by the vast majority of the 86 speakers who made statements, while opposition to such a course of action was expressed by 3 of those speakers. Similar support for such a convention or conventions was expressed at the Ninth Congress.

68. Argentina supports the need to initiate, without delay, the preparation of a general convention against organized transnational crime. Argentina hopes that the members of the international community will deploy the necessary efforts and resources to make it possible, within a reasonable time, to embody in a general convention the political commitments of countries to combat this form of crime and to ensure mutual cooperation to that end. The conclusion of a general convention would afford the international community a single, efficient and effective instrument for responding suitably to the activities and manifestations of organized transnational crime. Argentina has drawn attention to the Buenos Aires Regional Ministerial Workshop that adopted the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime (E/CN.15/1996/2/Add.1, annex), in which 25 States from Latin America and the Caribbean put forward a number of elements that could be included in a general convention against organized transnational crime.

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*The effect of technological advances in communication on the spiriting away of illegally obtained money has been described by Stephen E. Flynn: "Drug traffickers have a vast new array of possibilities for the placement of funds as national currencies become convertible and new and largely unregulated private banking institutions spring up throughout the former Soviet bloc and the Third World. ... The integration and increased efficiency of the global banking system allows money launderers to layer money with virtual impunity. The sheer volume of electronic funds transfers makes them almost impossible to track. In 1991, for example, the Clearing House Interbank Payment System handled some 37 billion transactions worth $222 trillion" (*Report of the Workshop on Money Laundering of the Resource Committee on Transnational Crime of the International Scientific and Professional Advisory Council*, Courmayeur, Italy, 23-24 March 1992, p. 2). Referring to smuggling opportunities in the United States, Flynn noted that in a single year 430 million people, 120 million cars, 8 million cargo containers, 720,000 large and small aircraft and 290,000 ships and small boats crossed the borders of that country. A thorough inspection of just one container took five customs agents three hours to complete. Yet only 13 containers filled with cocaine would need to slip through their mesh to satisfy the illicit demand for cocaine in the United States for a year. (S. E. Flynn, "Toward an international drug agenda: the case for new strategies, new institutions, new programs" *The 1993 International Narcotics Control Strategy and the Future of US Narcotics Policy*, hearing before the Subcommittee on International Security, International Organizations and Human Rights of the Committee on Foreign Affairs of the United States, House of Representatives (103rd Congress, first session, 11 May 1993) (Washington, D.C., United States Government Printing Office, 1993).)

Argentina has proposed that the Commission on Crime Prevention and Criminal Justice should act as a preparatory body for the elaboration of the convention.

69. Australia recognizes that good arguments could be made in support of a convention against organized transnational crime. It has expressed its concerns, however, about the difficulties that could beset the negotiation of such an instrument, such as the reaching of an agreement on a universally acceptable definition on what constitutes organized transnational crime and the avoidance of duplication of existing agreements in areas such as extradition and mutual assistance in criminal matters. There is also the risk that the need to achieve consensus on the content of a convention could lead to it being concluded at a level of generality that would seriously limit its effectiveness.

70. According to Austria, in the light of the numerous and complex types of organized transnational crime, it would seem to be a difficult enterprise to draft a comprehensive convention taking into account all these different phenomena, which have their own dynamics. A more realistic approach would, therefore, be to draft internationally binding legal instruments on specific issues, such as money-laundering and related questions involving seizure of criminal proceeds, and protection of witnesses, including international cooperation in programmes to protect witnesses.

71. According to Belarus, such a convention would provide for a commitment by States to the drafting, improvement and harmonization of legislative measures against organized transnational crime. An international convention should reflect overall requirements for the legislative base of the States signing the convention, which would be directed towards improving the level of openness in the activity of banking and financial institutions.

72. Expressing its willingness to accede to an international convention against organized transnational crime, Bolivia has suggested that such a convention should incorporate the following elements: (a) the decriminalization of acts of collaborating agents, which would enable the victims of organized transnational crime to act legally as witnesses for the prosecution; (b) the adjustment of mechanisms for protecting privacy, which make possible the structure and maintenance of criminal organizations; and (c) the adoption of the principle of "penalty-free informing", i.e. reducing the penalty for informants to facilitate the prosecuting authorities.

73. At this point in time, Canada is not in favour of the elaboration of a convention against organized transnational crime in view of the difficulty of achieving consensus among States on such a broad document, and in particular on the definition of organized crime. In its view, the resources of the Commission and Member States would be better used in practical assistance projects, including projects designed to encourage full implementation of existing relevant conventions, and on the negotiation of more focused and practical treaties and conventions such as a convention on mutual assistance or money-laundering. The Naples Political Declaration and Global Action Plan have already set out the relevant principles, as well as a practical plan for action by States in response to the growing threat of organized transnational crime. Since the Naples Political Declaration and Global Action Plan have made a strong statement on behalf of the world community and have already drawn attention to this pressing issue, the focus should be on implementation and development of other practical measures and instruments to combat organized transnational crime.

74. In the view of Cuba, in order to combat organized transnational crime it is not enough to merely establish or even ratify various regional or international instruments. The most important thing is that such instruments should be put into practice and this should be the main focus of the international community.

75. Germany has referred to a number of reservations that it had raised in 1992 on the desirability of a convention or other legal instrument on international cooperation in crime prevention and criminal justice, adding that it would not recommend the elaboration of a convention or any other legal instrument on specific issues or areas in the field of combating organized transnational crime. Germany has suggested that the open-

ended intergovernmental group to be established within the framework of the Commission at its fifth session should take over the task of developing concrete and feasible proposals for the implementation of the Naples Political Declaration and Global Action Plan.

76. According to the Holy See, such a convention would be useful because of the transnational nature of the activities of criminal organizations and because of the threat that those activities posed to the security and dignity of the individual, but also to the security and stability of Governments, economic and financial institutions and the international financial system. Only a global approach will be effective in countering these threats. Consequently, the Holy See considers that harmonization of national laws and coordination of the actions of Governments are both desirable and necessary and could be achieved most expeditiously by establishing binding international legal instruments. In connection with the convention, the Holy See has underlined the importance of socio-economic and cultural factors that facilitate and strengthen organized crime and has proposed the adoption of a broad range of preventive measures. It has also directed attention at rehabilitation, guarantees for the human rights of detainees and the needs of children pushed to violence by adults, while recommending measures to deal with violence against women, children and immigrants.

77. Italy has expressed its conviction that, in the face of expanding organized transnational crime and the effects of such expansion on global financial systems, the international community should develop an organized and systematized global response. The innovative aspect of the World Ministerial Conference held at Naples was its emphasis on a global approach to organized transnational crime regardless of its manifestations. This new vision was fully reflected in the Naples Political Declaration and Global Action Plan, which foresaw the need for reliance on multilateral cooperation, stressing common action and a continuous dialogue between the competent authorities, as well as an uninterrupted flow of information. The new approach embodied in the Naples Political Declaration and Global Action Plan has already been reflected in new strategies developed in the investigation and adjudication of organized transnational crime and the creation of operational networks that have increased efficiency in the fight against this form of crime. If the first step in the right direction was an increase in awareness of the problems and challenges posed by organized transnational crime, then the second step should be the creation of international mechanisms that will ensure action-oriented inter-State cooperation, for the purpose of equalizing the risks to criminal organizations in various countries, thus arresting the expansion and internationalization of organized crime. The Naples Political Declaration and Global Action Plan have set in motion a dynamic process that should be continued with the accumulation and analysis of knowledge on the structure of organized transnational crime and the strategies designed for its prevention and control, as well as the identification of solutions that will increase effectiveness. A confirmation of the validity of this course of action was the establishment of the senior expert group on organized crime by the Group of Seven major industrialized countries and the recommendations that it had elaborated. Italy is of the opinion that the effectiveness of the implementation of the Naples Political Declaration and Global Action Plan will be maximized if, while advancing the process of elaborating a convention or conventions against organized transnational crime, a group of highly qualified national experts develop specific recommendations, which could be immediately implemented at the national level.

78. Japan is of the view that, although it is necessary to consider the formulation of extensive and comprehensive measures, including the preparation of legal norms, in order to standardize the systems of Member States against organized crime, it hardly appears that there is currently an adequate common understanding among Member States regarding the actual pattern of illegal activity in question. If States were to agree at the present stage on detailed obligatory measures intended to form a common system all over the world in the field of organized crime prevention, such measures would not be likely to match the actual situation of each particular State, making their effectiveness dubious. Japan, therefore, believes that it would be best for the United Nations to prepare guidelines and provide them to Member States in the form of options. However, according to Japan, it may be advisable for the Commission on Crime Prevention and Criminal Justice to study the preparation of an international convention that would provide a basic framework

to suppress organized transnational crime, as part of global efforts to cope with organized crime expanding across national boundaries.

79. Jordan has expressed its commitment to all international conventions related to all matters of crime prevention.

80. The Philippines has indicated that the adoption of an international convention or any instrument as a system of international cooperation would greatly enhance the action plan of the international community against organized transnational crime. However, in the absence of a general framework or model for international cooperation against organized transnational crime and in view of the diversity of legal systems, as well as the variety of the legislative agenda of countries, while desirable, it might not be appropriate and effective at present to effect world cooperation through such an international convention. Pending the formulation of such a convention, it would be appropriate to encourage the development of bilateral agreements or a multilateral arrangement that would provide for general cooperation in the areas of investigation, prosecution and extradition of offenders.

81. Qatar believes that it is important to accelerate the establishment of international cooperation in the field of action against organized transnational crime, including the formulation of bilateral and multilateral agreements. As each country has its own crime definitions, there is a need for serious and objective studies to crystallize a joint vision by the international community regarding the types of crime that it wishes to combat. Accordingly, effective action for the achievement of an international agreement on combating organized transnational crime requires coordination with neighbouring States that are similarly affected.

82. The Republic of Korea is of the opinion that the situation created by organized transnational crime demands strengthened international cooperation at all levels.

83. Turkey considers useful the elaboration of an international convention against organized transnational crime. Such a convention should cover international terrorist organizations, as well as trafficking in illicit drugs, chemicals, arms and illegal migrants.

VI. THE CREATION OF A CENTRAL REPOSITORY OF LEGISLATIVE AND REGULATORY MEASURES AGAINST ORGANIZED TRANSNATIONAL CRIME

84. In order to avoid duplication of efforts and to maximize the efficiency of the services provided by the Crime Prevention and Criminal Justice Division to its constituency, the mandates contained in Council resolutions 1995/11 and 1995/27, section II, regarding the creation of a central repository and the establishment of an integrated system for the periodic gathering of information, respectively, can only be viewed jointly. In any event, the real value of a central repository would lie in the availability of up-to-date information and would, therefore, need to be regularly reviewed and supplemented. Furthermore, such a repository would not be complete without information on international cooperation modalities, including bilateral or multilateral agreements on extradition and mutual assistance in criminal matters.

85. In their responses, Member States have reiterated the need for reliable information, which was stressed in the Naples Political Declaration and Global Action Plan, as an essential tool in the fight against organized transnational crime. Most Member States have included detailed information on their legislative and regulatory initiatives, their international cooperation arrangements and the organizational structures that they have set up to deal with the problem. Australia, for example, has indicated that it is considering providing detailed information, while Germany has expressed its concern about the fact that collection of the relevant information and provision thereof to the Division is a labour- and resource-intensive activity that is not justified in view of the Division's lack of resources to establish and update a proper collection of information. Germany is, however, prepared to provide specific information upon request. Japan has expressed its full

support for the creation of a central repository, but has cautioned against duplication of information that is routinely provided to the United Nations International Drug Control Programme (UNDCP). These concerns notwithstanding, most respondents seem in principle keen to move ahead and the quality and quantity of information provided constitute proof of the feasibility and usefulness of a central repository. In part, such a repository would complement the steps that are being taken by some Member States to establish central agencies dedicated to compiling material on organized crime at the national level.

86. The creation of a central repository should rely on the willingness of Member States and international organizations to devote the time required to provide and regularly update the relevant information. The three principal categories of information could be: (a) national legislation, including regulatory measures; (b) organizational structures; and (c) international cooperation arrangements, including bilateral and multilateral treaties, and implementing legislation. The contents of the repository would be available in electronic form through the United Nations Crime and Justice Information Network and the Internet home page of the Division, but provision would be made to make available information in non-electronic form to those Member States that do not possess the capacity for electronic access to the repository. The Division would formulate a standard format for collecting and updating the required information, consisting of multiple tables designed to group the required information in several categories, thus facilitating the provision of responses by Member States. At the initial stage, and in order to reduce the time and resources required, legislative texts would be organized and filed in hard copy, with brief summaries available in electronic form. Requesting States would be provided with copies of legislation if necessary. The Division would, when appropriate and possible, index and cross-reference legislative texts, accompanying them with a brief commentary and legislative history. While Member States would be requested to provide their legislative texts in one of the official languages of the United Nations, provision would need to be made for translation of texts when developing countries and countries with economies in transition providing such texts lack the necessary resources for translation. The repository would be updated on a yearly basis. All this would be carried out in close cooperation with UNDCP.

VII. CONCLUSION

87. The threat posed to national and international security by organized transnational crime is not the inadvertent by-product of long-term trends. On the contrary, this threat is an inevitable consequence of the activities of organizations that deny the State its legitimate monopoly of violence, corrupt State institutions, undermine the rule of law, threaten the integrity of financial and commercial sectors of society, contravene legal and social norms and conventions, transgress national sovereignty and violate national borders. The threat is qualitatively different from that posed in the past.

88. All this is largely the result of the changed context within which organized crime now operates. New opportunities have been exploited eagerly and effectively, leaving law enforcement trailing behind and working to match the inventiveness, adaptability and resilience of criminal organizations that have become transnational in both thought and deed while operating from, or finding refuge in, safe home bases or "sanctuaries".* This underlines the fact that criminal organizations carry on their activities in what for them is, in effect, a borderless world, while law enforcement is significantly constrained by having to operate in what is still for them a bordered world. Both criminal personnel and "hot money" have unprecedented mobility, aided by the exploitation of the most modern technology.

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*For example, it has been reported that Cambodia, because of lack of extradition treaties, is being used as a safe haven by between 150 and 300 of the 2,000 criminals most wanted by the International Criminal Police Organization (ICPO/Interpol) (*International Herald Tribune*, 17 August 1995).

89. Transnational criminal organizations have become a security threat, having gone beyond the issue of domestic law and order. The challenge is made more daunting by the fact that such organizations are a complex mix, with various shapes and sizes, intersecting in multiple ways with the legitimate economy and society, simultaneously amorphous and concrete, and engaged in corruption, as well as coercion and confrontation, depending on exigencies and opportunities. Meeting the challenge requires the allocation of commensurate resources by the international community and the maintenance of a strong collective political will, keeping in mind that no State can afford to be complacent in responding to organized transnational crime. Should this not be done, the long-term consequences for democratic governance and the rule of law are dismal.

90. Novel threats demand novel combinations of expertise and novel operational capabilities. If the international community is to respond effectively to the threat posed by transnational criminal organizations then policy solutions need to be not only comprehensive and well coordinated, but also highly imaginative. Strategies should take full account of the nature of the challenge. On the grounds that it takes a network to defeat a network, for example, emphasis should be given not simply to extending the formalities of law enforcement cooperation (although this is important), but also to building a transnational network of coordinated measures that will eventually be global.

91. An effective concerted approach should also take into account the risk management strategies of criminal organizations and should initiate appropriate action to reduce or overcome them. In effect, responses should be the converse of the criminal organizations. In this connection, there would appear to be two priority objectives that could help to increase the risks and costs incurred by transnational criminal organizations. The first would be to eliminate safe havens or safe home bases for criminal organizations, recognizing that a safe haven is more likely to be the result of limited State capacity than to be the result of a lack of will. In any event, a multilateral approach offers distinct advantages and a higher probability of success. State capacity can be enhanced through well-targeted programmes of technical assistance. Underlying such programmes would be a long-term commitment to implement measures designed both to strengthen the State and to eradicate the conditions in which organized crime flourishes. The second priority would be to target the assets of criminal organizations, an approach that focuses less on the money-laundering process as such and more on the uncovering and forfeiture of the assets accrued by transnational criminal organizations.

VIII. ACTION REQUIRED OF THE COMMISSION

92. The Naples Political Declaration and Global Action Plan, complemented by the action already taken by the Commission at its fourth session, have set in motion a process of increased awareness of the threat posed by organized transnational crime and of the need for urgent action at the national and international levels. The Commission may wish to recommend a well-structured programme of activities, which would be phased over a determined period of time, leading gradually to the full implementation of the Naples Political Declaration and Global Action Plan. Such a programme might include comparative studies of the situation of organized transnational crime around the world and the establishment and maintenance of a central repository for information on legislation, regulatory measures, organizational structures designed to prevent and control organized transnational crime, and bilateral and multilateral cooperation arrangements. In this event, the Commission may wish to encourage States and relevant international organizations to provide information and related material to the Crime Prevention and Criminal Justice Division and to regularly update the information. As part of the above-mentioned programme, the Commission may wish to fully exercise its coordinating role, with the assistance of the Division. Finally, the Commission may wish to direct attention to ways and means of strengthening the capacity of the Secretariat to undertake operational activities and provide practical assistance to requesting States. In this regard, the Commission may also wish to urge Governments to provide the required input for the development of appropriate manuals and training guides, including model legislation and compilations of best practices in the detection, investigation and adjudication of organized transnational crime.

Notes

[1]See Christopher J. Ulrich, *The Price of Freedom: The Criminal Threat in Russia, Eastern Europe, and the Baltic Region* (London, Institute for Conflict Studies, 1995).

[2]Joel Kurtzman, *The Death of Money* (New York, Simon and Schuster, 1993).

[3] Ibid., p. 11.

[4]Susan Strange, "From Bretton Woods to the casino economy", S. Corbridge, N. Thrift and R. Martin, eds., *Money, Power and Space* (Oxford, Blackwell, 1994), pp. 49-62.

[5]See Alex P. Schmid, "Organized crime: links between upper world and underworld", unpublished paper.

[6]Michael Hirsh, "Tokyo's dirty secret: banks and the mob", *Newsweek*, 18 December 1995, pp. 36-37.

[7]Stephen Skinner, "Australia battles international organized crime", *Reuters*, 28 March 1994.

[8]B. G. Thamm, *Drogenfreigabe: Kapitulation oder Ausweg?* (Hilden, Germany, Verlag Deutsche Polizeiliteratur, 1989), p. 209.

[9]*Washington Post*, 9 March 1993.

[10]Phil Williams, "Transnational criminal organizations: strategic alliances", Brad Roberts, ed., *Order and Disorder after the Cold War* (Cambridge, Massachusetts, MIT Press, 1995), pp. 235-250.

[11]Richter H. Moore, Jr., "The activities and personnel of twenty-first century organized crime", *Criminal Organizations*, vol. 9, No. 1 (summer 1994), pp. 3-11.

[12]Benjamin R. Barber, *Jihad versus McWorld* (New York, Times Books, 1995), p. 4.

[13]Charles Hanley, "Increasingly, guerrillas financed by drugs", *Toronto Star*, 29 December 1994, p. A19.

[14]Charles Perrow, *Normal Accidents* (New York, Basic Books, 1984), p. 332.